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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/057,406	01/23/2002	Gilles Jourdin	VAL1599P0251US	1614
7590	10/04/2004		EXAMINER	
CITICORP CENTER, SUITE 3800			SMALLEY, JAMES N	
500 WEST MADISON AVENUE			ART UNIT	
CHICAGO, IL 60661-2511			PAPER NUMBER	

3727

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,406

Applicant(s)

JOURDIN, GILLES

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith US 2,808,954.

Smith '954 teaches a tamper proof closure for containers, comprising a retainer ring (11) and a lining collar (12), and longitudinal external ribs (15) extending over the height of the skirt. It is inherent the skirt is distorted inwards as the collar is fit over the retainer ring. The ring would inherently be distorted inwards at the ribs, due to the inward forcing caused by the radially inward forcing of the collar as it is forced over the ring.

Regarding the preamble of claim 11, the limitation, "for fastening a pump on a vessel neck," is intended use, and the claim is anticipated as the references teaches all structural limitations. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jourdin et al. US 6,595,395 in view of Smith US 2,808,954.

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Jourdin '395 teaches a retainer ring (2) and lining collar (3), but does not teach external ribs extending the length of the skirt.

Smith '954 teaches a method of fixing a retaining ring (11) to a bottle, and having a collar (12). The retaining ring is provided with ribs (15) for engaging the interior surface of the collar. Smith '954 further discloses, in col. 1, lines 41-47, that the ribs serve to compensate for variations in the outside diameter of the vial or tube to ensure proper and effective sealing, as well as to hold the elements together, preventing accidental separation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the interference connection between the collar and ring of Jourdin '395, providing the ring with the ribs (15) taught by Smith '954, motivated by the benefit of compensation for variations in the outside diameter of the vial or tube to ensure proper and effective sealing, as well as to hold the elements together, preventing accidental separation.

Jourdin '395 further teaches internal ribs (23) extending the length of the skirt; that the collar is fit over the ring before being applied to the bottle; and, in fig. 5, that the internal ribs (23) should be provided with a recess (i.e. no rib should be present on the skirt, behind the rib) so as to allow radial outward deformation of the skirt.

5. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith US 2,808,954 as applied above to claim 1, and in view of Jourdin et al. US 6,595,395.

Smith '954 does not teach internal ribs extending the height of the skirt.

Jourdin '954 teaches internal ribs (23) for engaging the exterior surface of a bottle neck, and discloses the ribs plastically deform to securely engage the neck of the bottle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Smith '954, providing the internal surface of the skirt with projections (23) as taught by Jourdin '954, motivated by the benefit of securing the retainer ring to the neck of a bottle. The fixing means taught by Jourdin '954 is a mechanical expedient of the means disclosed by Smith '954,

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and recognizing the interchangeability of these two means of fastening a ring to a bottle neck is within ordinary skill.

Response to Arguments

6. Applicant's arguments, see "Remarks," filed 07 June 2004, with respect to the rejection of claims 1-3, 7 and 10 over de Pous et al. US 6,409,049 have been fully considered and are persuasive. The rejection has been withdrawn.

7. Applicant's arguments filed 07 June 2004 have been fully considered but they are not persuasive.

Applicant argues Smith '954 does not anticipate, "a device for fastening a distribution component on a vessel neck."

Examiner notes that while Smith '954 teaches a closure, the claim limitation is a) intended use and b) broad, such that the limitations are not known.

First, the limitation "for fastening" implies that the limitation is intended use. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Secondly, the metes and bounds of, "a distribution component," are broad, and could encompass almost anything. A distribution component could be a game piece within the cap, for distribution information or entertainment.

The applicant's assertion that the cap of Smith '954 being removable is not relevant to the argument because the limitation does not appear in any of the claims rejected over Smith '954. Claims are examined given the broadest reasonable interpretation.

Applicant argues against the combination of Jourdin '395 in view of Smith '954.

Although the cap of Smith '954 is removable, whereas Jourdin '395 serves to lock the cap to the bottle, the rejection is based on providing a connection between an exterior collar and an interior retaining ring. The structure that retains the cap to the bottle is left unchanged by the combination.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



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